



This Recommended Order and Decision became the Order and Decision of the
Illinois Human Rights Commission on 7/10/03.

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:)	
)	
GARY MILLBROOK,)	
)	
Complainant,)	
)	
and)	CHARGE NO: 1998CF0388
)	EEOC NO: 21B973476
IBP INCORPORATED,)	ALS NO: S-10550
)	
Respondent.)	

RECOMMENDED ORDER AND DECISION

This matter comes to me on Respondent's Motion to dismiss and Complainant's response thereto.

Contentions of the Parties

Respondent contends that this case should be dismissed because the matter has been completed within the federal court system and is now barred in front of the Commission by the doctrine of *res judicata*. Complainant disagrees and submits that the doctrine of *res judicata* does not apply here because the federal court applied a different legal standard to this case in rendering a decision.

Findings of Fact

The following findings were derived from the record:

1. On August 4, 1997, Complainant filed a charge of race discrimination with the Illinois Department of Human Rights. The charge alleged that Complainant was discriminated against in violation of state and federal law and indicated that the charge was also cross-filed with the Equal Employment Opportunity Commission.

2. On July 30, 1998, the Illinois Department of Human Rights filed a Complaint on Complainant's behalf alleging Respondent discriminated against Complainant because of his race in violation of the Illinois Human Rights Act.
3. On November 30, 1998, Complainant filed a Complaint in federal court alleging Respondent discriminated against him because of his race in violation of Title VII of the Civil Rights Act of 1964.
4. Both the Illinois Human Rights Act Complaint and the Title VII Complaint alleged that Respondent failed to hire or promote Complainant from a janitor to a Quality Control Inspector because of his race. Both Complaints also alleged that less qualified white candidates were promoted or hired to the position of Quality Control Inspector.
5. On December 4, 1998 Complainant moved to stay the case in front of the Commission because he "filed a federal civil action seeking relief with respect to the alleged civil rights violation at issue in the Department of Human Rights Charge and Complaint." (record file, Motion for Stay of Proceedings).
6. On January 21, 1999, the case was stayed on Complainant's motion.
7. On September 21, 2000, a jury verdict was entered in Complainant's favor.
8. On February 21, 2002, the U.S. Court of Appeals reversed the jury verdict in favor of Respondent and announced a new legal standard with respect to "comparative qualifications" in discrimination cases. The U.S. Supreme Court denied Complainant's Petition for Writ of Certiorari on October 7, 2002.
9. On October 14, 2002, Respondent moved to dismiss this case under the doctrine of *res judicata* because the case was completed in the federal system when the U.S. Supreme court denied Complainant's Petition for Writ of Certiorari.

Conclusions of Law

1. The Illinois Human Rights Commission has jurisdiction over the parties and the subject matter in this case.

2. Complainant is an "employee" as defined by the Illinois Human Rights Act. **775 ILCS 5/2-101(A)(1)(a).**
3. Respondent is an "employer" as defined by the Illinois Human Rights Act. **775 ILCS 5/2-101(B)(1)(a).**
4. The doctrine of *res judicata* bars re-litigation of a case where a court of competent jurisdiction has issued a final decision on the merits of the case.
5. The jury verdict entered in U.S. District Court constituted a decision on the merits of this case by a court of competent jurisdiction.
6. All three elements of *res judicata* have been met in this case, and the case is barred from being re-litigated in front of the Commission.

Determination

This case is barred from proceeding in front of the Illinois Human Rights Commission by the doctrine of *res judicata* and should now be dismissed with prejudice.

Discussion

In order to apply the doctrine of *res judicata* in this case, three elements must be satisfied. First, there must be a common identity of the parties or their privies. Second, there must be a common identity of the cause of action; and third, there must be a final judgment on the merits rendered by a court of competent jurisdiction. **Schilhavy and Board of Governors of State Colleges and Universities**, ___ Ill. HRC. Rep ___, (1992SF0474, August 22, 2002).

Here, Complainant's resistance to the application of *res judicata* to his claim lies in the notion that the second element is not satisfied. Complainant argues that because the Seventh Circuit Court of Appeals applied a different legal standard to his claim there can never be "identity of cause" between the two claims. Complainant bases his argument on the Commission's decision in the case of **Snider v. Consolidated Coal Company**, ___ Ill. HRC. Rep. ___, (1985SF0280, November 24, 1998)

In **Snider**, the Commission applied the elements of *res judicata* and determined that all portions of Snider's complaint were barred by the doctrine except for the issue of emotional distress damages. This is because at the time Snider's case was being adjudicated in the federal court system, Title VII of the Civil Rights Act of 1964 had not yet been amended to include the remedy of damages for emotional distress. Therefore, the administrative law judge found that there was not "identity of a cause of action" with respect to damages for sexual harassment. Because Snider had been precluded from seeking that particular legal remedy in federal court, the doctrine of *res judicata* did not bar her from seeking that specific remedy in front of the Commission. (See, **Snider**, slip op. pp. 13-15).

The **Snider** case is distinguishable from the present case because it dealt with a precluded legal *remedy* not a precluded legal *theory*. Even so, in the present case the federal court, at the trial level, applied the same legal theory that the Commission would have applied in deciding this case. In other words, the element of "identity of cause" is met here because Complainant had an opportunity to fully litigate his claims in federal court and received a decision on the merits at the federal district court level when he received a jury verdict in his favor. (See, for example, **Schilhavy and Board of Governors of State Colleges and Universities**, ___ Ill. HRC. Rep ___, (1992SF0474, August 22, 2002) holding that a jury verdict in a federal action constitutes a final adjudication on the merits of a retaliation claim where the complainant did not prevail in his appeal to the Seventh Circuit Court of Appeals.)

Complainant's argument that there is no "identity of cause" because the Seventh Circuit Court of Appeals changed the standard or theory for "comparative qualification" and applied the new standard to his case on appeal is irrelevant. Complainant fully litigated his claims in federal court and received a jury verdict in his favor *before* the new "comparative qualification" theory in discrimination cases was announced by the Seventh Circuit. The case would have been dismissed after the jury's decision but for the fact that the Seventh

Circuit could have remanded the case back to the district court to start the case anew. At that point, Complainant could have theoretically dismissed her case without prejudice and proceeded before the Commission. (See, Order entered on March 27, 2001.) Only the single possibility of a dismissal *without prejudice* kept this case alive at the Commission.

In summary, the doctrine of *res judicata* now bars this case in front of the Commission because all three elements are met. The parties are identical, the issues before the Commission and the federal district court are the same, and the jury verdict in Complainant's favor constituted a decision on the merits by a court of competent jurisdiction.

Complainant voluntarily chose to try his claims to a jury in the federal district court and must now accept the consequences of that decision. While the reversal of the jury verdict in favor of Respondent is unfortunate for Complainant, it does not entitle him to breathe life back into the claim in front of the Commission, re-litigate the same issue, and apply the same standard or theory the jury in the federal district court originally applied in his case.

Recommendation

Based on the above findings of fact and conclusions of law, I recommend that the Illinois Human Rights Commission dismiss with prejudice the Complaint of Gary Millbrook against Respondent IBP Incorporated, together with the underlying charge number 1998CF0388.

ILLINOIS HUMAN RIGHTS COMMISSION

KELLI L. GIDCUMB
Administrative Law Judge
Illinois Human Rights Commission

ENTERED THE 5TH DAY OF MARCH, 2003.